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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/400,649	09/21/1999	ANDREW J. SZABO	SZABO-201.1	3645

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EXAMINER

RIMELL, SAMUEL G

ART UNIT

PAPER NUMBER

2166

DATE MAILED: 01/14/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

TR

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**Office Action Summary**

Application No.

09/400,649

Applicant(s)

SZABO, ANDREW J.

Examiner

Sam Rimell

Art Unit

2166

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 29-73 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 29-73 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) AU 2166
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Art Unit: 2166

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 29-31 and 37-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shepley ('989) in view of Balintfy ('778).

The reasons for this rejection were set forth in the office action of 1/17/01 and are hereby incorporated by reference.

Claims 32-34 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shepley ('989) in view of Balintfy ('778) and further in view of Williams III ('350).

The reasons for this rejection were set forth in the office action of 1/17/01 and are hereby incorporated by reference.

Claims 35 and 67-73 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shepley ('989) in view of Balintfy ('778) and further in view of Ecer ('564).

The reasons for this rejection were set forth in the office action of 1/17/01 and are hereby incorporated by reference.

Claims 44-46, 52-59 and 61-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shepley ('989) in view of Balintfy ('778) and further in view of MacGregor et al. ('621).

The reasons for this rejection were set forth in the office action of 1/17/01 and are hereby incorporated by reference.

Claims 47-49 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shepley ('989) in view of Balintfy ('778) and further in view of MacGregor et al. ('621) and Williams III ('350).

The reasons for this rejection were set forth in the office action of 1/17/01 and are hereby incorporated by reference.

Claims 50, 60, 65, 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shepley ('989) in view of Balintfy ('778) and further in view of MacGregor et al. ('621) and Ecer ('564).

The reasons for this rejection were set forth in the office action of 1/17/01 and are hereby incorporated by reference.

#### Remarks

None of the independent claims of record have been amended. Applicant relies on arguments exclusively to address the rejections. The arguments will be addressed in the order they are presented by applicant.

Claims 29-31 and 37-43: Applicant arguments appear to be suggesting that both the primary and secondary references applied in the rejection must each individually contain every single feature in the claims. This is not in fact what is required. In making a rejection under 35 USC 103, there is no requirement that each individual reference contain every single claim limitation. The limitations are taught by the combination of references. In the case of claims 29-31 and 37-43, Shepley teaches the concepts of determining a user characteristic and defining a set of records, while Balintfy teaches the determination of economic factors (in particular, price). Both references appear to suggest an output of optimized information, although in Shepley, the

Art Unit: 2166

output is in electronic form. The combination of references teaches the required claim limitations. There is no requirement that Shepley, by itself, teach every single claim limitation, or that Balintfy, by itself, teach every single claim limitation.

Claims 59 and 67: Applicant argues that Balintfy does not teach a ranking of records. However, this feature is taught by Shepley (See in particular col. 7, lines 40-44 of Shepley). Also see page 3, last paragraph of the first office action where the features of Shepley are explained.

Claim 29: Applicant argues that in both Shepley and Balintfy, the user manually selects the food for inclusion in processing, and thus there is no classification of records. This argument is not correct. While it is true that in both Shepley and Balintfy there is some initial specification of parameters which are made by the user, there is unquestionably a processing action that takes with these parameters and that the result is a classification of data. In the case of Shepley, the classification of data might be the ten best breakfast cereals for meeting nutritional goals. In Balintfy, the classification of data might be the appropriate dietary balance to meet a cost restriction. In each case, there is clearly a classification of data.

Claims 37 and 38: Applicant argues that Shepley does not present records to the user based on user defined characteristics. This argument is incorrect. See column 7, lines 40-44 where records of specific types of cereals are provided to the user based on input of specific user defined nutritional goals. Applicant also discusses the Williams III reference on the context of claims 37-38, although Williams III was not applied to this set of claims.

Claims 67-73: Applicant argues that Ecer does not remedy the deficiencies of Shepley and Balintfy but does not state why. Applicant also discusses the Williams III reference, but this reference was not applied to this set of claims.

Claims 44-46, 52-59 and 61-64: Applicant argues that MacGregor et al. does not teach both the usage of economic parameters and relevance parameters. In the office action, the examiner explicitly stated that the reference to Balintfy was relied upon to teach the economic parameters. MacGregor et al. is relied upon to teach the relevance parameters. Applicant does not provide rationale to conclude that MacGregor et al. lacks the teaching of relevance parameters.

Claims 47-49 and 51: Applicant generally re-asserts the previous arguments as described above. Applicant does not present specific arguments that are relevant to these claims.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Application/Control Number: 09/400,649

Page 6

Art Unit: 2166

Any inquiry concerning this communication should be directed to Sam Rimell at telephone number (703) 306-5626.

A handwritten signature in black ink, appearing to read 'S. Rimell', written in a cursive style.

Sam Rimell  
Primary Examiner  
Art Unit 2166